FILED
JAN 12 2001
CLERK

(3)

No. 00-759

IN THE

Supreme Court of the United States

THE NEW PULASKI COMPANY LIMITED PARTNERSHIP,

Petitioner,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF

ROGER W. TITUS
Counsel of Record
MITCHELL Y. MIRVISS
KEVIN B. COLLINS
VENABLE, BAETJER AND HOWARD, LLP
One Church Street, Fifth Floor
Rockville, Maryland 20850
(301) 217-5600

Attorneys for Petitioner

164639

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

3pp

ARGUMENT

In its brief in opposition, the City misses the entire point of the public importance of this case. The decision below fundamentally conflicts with this Court's ripeness teachings in *Williamson County Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985) and its progeny. The moratorium ordinance at issue in this case contains an express exemption procedure, denominated as such, under which an exemption may be granted after a series of findings by the City's Director of Public Works which are required to be approved in an ordinance of the City Council. This exemption process, which contains specific standards, was followed by the Petitioner based on faithful adherence to this Court's finality teachings in *Williamson County*, only to be met by the limitations argument successfully advanced below by the City. This is the very process that was set forth in *Yee v. City of Escondido*, 503 U.S. 519 (1992), which contained an express exemption process that, as here, also required approval in the form of an ordinance adopted by the City Council.

Until this case, no court has ever held that *Williamson County* might not apply to such an express exemption procedure set forth directly in the statute itself. The Ninth Circuit decisions in the *Tahoe-Sierra*[1] cases, for instance,

---

1. *Tahoe-Sierra Preservation Council v. Tahoe Reg'l Planning Agency*, 938 F.2d 153 (9th Cir. 1991) ("*Tahoe II*"); *Tahoe-Sierra Preservation Council v. Tahoe Reg'l Planning Agency*, 911 F.2d 1331 (9th Cir. 1990) ("*Tahoe I*"). Contrary to the City's contention, *Tahoe II* did not overrule *Tahoe I*; rather, the second panel disagreed with and rejected the reasoning of the first decision, finding that it had "limited" precedential value because of a split among the judges. *See Tahoe II*, 938 F.2d at 157.

involved an entirely different statutory arrangement. In stark contrast to the City's moratorium, the *Tahoe-Sierra* regional plan contained no express exemption procedure, but only a process through which one could seek an entirely discretionary amendment to the regional plan. The decision below is thus fatally at odds with *Williamson County* and will, indeed, create confusion in the already difficult area of takings jurisprudence.

CONCLUSION

Takings litigation should not be a game, with multi-million dollar traps set for the unwary who faithfully follow decisions of this Court. If the finality rule of *Williamson County* is to be modified or attenuated, this Court should make that decision. Because of the conflict of the decision below with this Court's decision in *Williamson County*, — as reflected by the division within the Fourth and Ninth Circuits — this Court should issue a Writ of Certiorari.

Respectfully submitted,

ROGER W. TITUS
Counsel of Record
MITCHELL Y. MIRVISS
KEVIN B. COLLINS
VENABLE, BAETJER AND HOWARD, LLP
One Church Street, Fifth Floor
Rockville, Maryland 20850
(301) 217-5600

Attorneys for Petitioner